

Auctioneers

Sec.

73-4-1	Short title
73-4-3	Definitions
73-4-5	Exemptions
73-4-7	Mississippi Auctioneer Commission created; powers; member qualifications and compensation
73-4-9	Annual and special meetings; quorum; majority vote
73-4-11	Election of officers; duties
73-4-13	Commission powers
73-4-15	Mississippi Auctioneer Licensure Fund created
73-4-17	License classifications; qualifications
73-4-19	Complaints; hearings; remedies
73-4-21	License issuance without examination
73-4-23	License through reciprocity
73-4-25	Prohibited conduct
73-4-27	Auction gallery license; additional requirements
73-4-29	Bond; factory built home auctions
73-4-31	Bond terms and form; cancellation
73-4-33	Actions and hearings on bond
73-4-35	Auctioneer's duties to owner or consignor
73-4-37	Records and accounts
73-4-39	Written contract with owner or consignor; exception
73-4-41	Advertising disclosures required
73-4-43	Acting without license; penalty
73-4-45	Penalty for other violations
73-4-47	Commission action for injunction
73-4-49	Averments required in charging violation
73-4-51	New programs subject to appropriations

73-4-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Auctioneers License Act.”

73-4-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

- (a) **“Auction”** means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.
- (b) **“Auction gallery”** means any business establishment or other location owned by any entity other than a duly licensed auctioneer where goods are sold or advertised to be sold at auction or on a recurring basis.
- (c) **“Auctioneer”** means an individual who is engaged in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods or real estate at an auction.
- (d) **“Commission”** means the Mississippi Auctioneer Commission.
- (e) **“Goods”** means any tangible personal property that can be lawfully offered for sale, real estate, property sold pursuant to any will or settlement of any estate, property sold pursuant to any legal foreclosure, automobiles, or farm or other heavy equipment.
- (f) **“Licensee”** means any person licensed under this chapter, and, in the case of an auction gallery, includes the person required to obtain a license for such auction gallery.
- (g) **“Organization”** means a corporation, partnership, trust (specifically a business trust), firm, association, or any other form of business enterprise which is owned by two (2) or more individuals.
- (h) **“Person”** means an organization or an individual.

73-4-5. Exemptions

The provisions of this chapter shall not apply to the following transactions:

- (a) A sale conducted by order of any United States court pursuant to Title 11 of the United States Code relating to bankruptcy;
 - (b) A sale conducted by an employee of the United States or the State of Mississippi or its political subdivisions in the course and scope of his employment;
 - (c) A sale conducted by a charitable or nonprofit organization if the auctioneer receives no compensation;
-

- (d) A sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis;
- (e) A sale conducted by an individual acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of court; by a real estate agent, broker or salesman, who auctions property that he has an exclusive listing agreement on, if done through a silent or written auction not done by public outcry or by a trustee acting under a trust agreement, deed of trust or will;
- (f) A foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;
- (g) A sale conducted by sealed bid;
- (h) An auction conducted in a course of study, approved by the Secretary of State, for auctioneers and conducted only for student training purposes;
- (i) An auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7U.S.C.S. 181 et seq.);
- (j) An auction of livestock conducted by a nonprofit livestock trade association chartered in this state if the auction involved only the sale of the trade association's members' livestock; or
- (k) An auction conducted by a charitable or nonprofit organization chartered in this state if the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county, or municipal authority.

73-4-7 Mississippi Auctioneer Commission; creation; powers and duties generally; qualifications, terms, and compensation of members.

- (1) The Mississippi Auctioneer Commission is created, and it shall have the authority to make such rules and regulations as are reasonable and necessary for the orderly regulation of the auctioneering profession and the protection of the public, which rules and regulations are not inconsistent with the Mississippi Constitution of 1890 and state laws. The commission shall have the following powers:
 - (a) The power to set reasonable license fees, to collect and hold such fees and to disburse such fees in any manner not inconsistent with this chapter.
 - (b) The power to make such rules and regulations as will promote the orderly functioning of the auction profession and ensure the protection of the public.
 - (c) The power to hire and retain such staff and support personnel as are necessary to conduct business and assure compliance with this chapter.
 - (d) The power to conduct investigations, hold hearings, subpoena witnesses, make findings of fact and otherwise enforce the disciplinary provisions contained in this chapter.
-

(2) The Mississippi Auctioneer Commission shall consist of five (5) members, one (1) from each congressional district, who shall be appointed by the Governor. All appointees shall possess the following minimum qualifications:

(a) An appointee shall be a citizen of Mississippi.

(b) An appointee shall have been engaged as an auctioneer for a period of not less than five (5) years immediately preceding his appointment.

(c) An appointee shall be of good reputation, trustworthy and knowledgeable in the auction profession.

An individual may not act as a member of the commission while holding another elected or appointed office in either the state or federal government or while owning a school or other facility to train individuals to be auctioneers.

(3) In order to assure continuity, the Governor shall appoint the initial member of the commission for the following terms:

(a) The member appointed from the First Congressional District shall serve a term of one (1) year;

(b) The member appointed from the Second Congressional District shall serve a term of two (2) years;

(c) The member appointed from the Third Congressional District shall serve a term of three (3) years;

(d) The member appointed from the Fourth Congressional District shall serve a term of four (4) years;

(e) The member appointed from the Fifth Congressional District shall serve a term of five (5) years.

Subsequent term shall be for five (5) years, except for interim appointments to fill unexpired terms which shall be only for the unexpired term.

(4) Each member of the commission shall receive a per diem as provided by Section 25-3-69 per meeting and shall be reimbursed for ordinary and necessary expenses incurred in the performance of official duties as provided in Section 25-3-41.

73-4-9. Annual and special meeting; quorum, majority vote.

The Commission shall meet each January at the time and place established by the chairman to conduct an election of officers and such other business may be appropriate. The Commission shall also meet upon the call of the chairman or upon the request of any two (2) members of the Commission. The secretary shall provide reasonable notice of the time and place of each meeting to all members.

Three (3) members shall constitute a quorum for the purpose of transacting business. A majority vote of the Commission shall be necessary to bind the Commission.

73-4-11. Election of officers; duties.

(1) At the meeting to be held each January, the Commission shall elect from its membership a chairman and vice chairman. Each officer shall serve a term of one (1) year and shall not vacate office until a successor is elected.

(2) The chairman shall preside at all meetings of the Commission.

- (3) The vice chairman shall act as presiding officer in the absence of the chairman and shall perform such other duties as the chairman may direct.
- (4) The Commission shall appoint an executive director who shall not be a member of the Commission.
- (5) The executive director shall:
 - (a) Notify all members of meetings;
 - (b) Keep a record of all meetings of the Commission and other proceedings, transactions, communications, official acts and records of the Commission; and
 - (c) Perform such other duties as the chairman directs.

73-4-13. Commission powers.

The Commission is empowered to :

- (a) Administer and enforce the provisions of this chapter.
- (b) Promulgate such rules and regulations and prescribe such forms as are necessary for the administration and the effective and efficient enforcement of this chapter.
- (c) Issue, suspend and revoke licenses in accordance with this chapter.
- (d) Provide for the filing and approval of surety bonds as required by this chapter.
- (e) Investigate complaints concerning licensees or persons the Commission has reason to believe should be licensees, specifically including complaints respecting failure to comply with this chapter or the rules and regulations promulgated as authorized by this chapter and to take appropriate action to address such complaints.
- (f) Commence action, in the name of the State of Mississippi, in an appropriate circuit court in order to force compliance with this chapter or rules and regulations promulgated hereunder by restraining order or injunction.
- (g) Hold public hearing s on any matters for which a hearing is required under this chapter and to have all powers granted by law for such hearings.
- (h) Adopt a seal and through its secretary, certify copies.
- (i) Appoint an executive director and employ all necessary employees and consultants to enforce this chapter.

73-4-15. Mississippi Auctioneer Licensure Fund created.

All fees received by the Commission under this chapter shall be deposited into a special fund which is hereby created in the State Treasury to be known as the "Mississippi Auctioneer Licensure Fund." Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special funds shall be deposited to the credit of the special fund. All records of such fees deposited by the Commission and deposited in the special fund shall be available for inspection by the State Auditor. Monies from the special fund shall be used to support the Commission, upon appropriation by the Legislature.

73-4-17. License classifications; qualifications.

There shall be three (3) classes of auctioneers' licenses, which shall be livestock auctioneer, auctioneer, and auction gallery. All applicants for a license under this chapter shall possess the following minimum qualifications:

- (a) Applicants shall have attained the age of eighteen (18) years by the issuance date of the license.
 - (b) Applicants shall have obtained at a minimum a high school diploma or G.E.D. equivalent and shall be graduates of an auctioneering school approved by the Commission.
 - (c) Each applicant for a license under this chapter shall demonstrate to the Commission that he is of good moral character and worthy of public trust through background information to be provided on his application form and two (2) letters of reference from person not related to the applicant who have known the applicant at least three (3) years. The Commission may require additional information or a personal interview with the applicant to determine if such applicant should be granted a license.
 - (d) Each applicant for a license under this chapter shall take and successfully complete an examination as prescribed by the Commission. The examination shall include questions on ethics, reading comprehension, writing, spelling, elementary arithmetic, elementary principles of land economics, general knowledge of bulk sales law, contracts of sale, agency, leases, brokerage, knowledge of various goods commonly sold at auction, ability to call bids, knowledge of sale preparation and proper sale advertising and sale summary, and knowledge of the provisions of this chapter and the Commission's rules and regulations. There shall be separate examinations for auctioneer and auction gallery each based upon relevant subject matter appropriate to the license classification as set forth herein. Examinations shall be administered at least once a year and may be administered quarterly at the Commission's discretion provided there are at least twenty five examinees. The Commission shall ensure that the various forms of the test remain secure.
 - (e) In order to defray the cost of administration of the examinations, applicants for the examination shall pay fees as follows:
 - (i) Auctioneer - \$100.00
 - (ii) Auction gallery - \$100.00
 - (iii) Livestock auctioneer - \$100.00
 - (f) Each applicant desiring to sit for the examination for any license required under this chapter shall be required to furnish to the Commission at least thirty (30) days prior to the examination evidence of a surety bond in the following minimum amounts:
 - (i) Auctioneer - \$10,000.00.
 - (ii) Auction gallery - \$10,000.00
 - (iii) Livestock auctioneer - \$10,000.00
 - (g) In addition to the bond required herein, applicants for the auction gallery license shall furnish the Commission with all relevant information concerning the premises to be licensed, to include location, whether the premises are owned or leased, and an affidavit that the proposed use of the premises as an auction gallery does not violate zoning or any other use restrictions. A separate license shall be required for each business location of the owner of multiple auction galleries.
-

(h) All licenses granted pursuant to this chapter shall be for a term of two (2) years and shall expire on the first day of March at the end of such two- year term. Biannual license fees shall be set from time to time by the commission with a maximum fee of Two Hundred Dollars (\$200.00). Individuals failing to submit license renewal fees on or before March 1 of the year for renewal shall be required to successfully pass the next administration of the examination in order to renew a license.

Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

73-4-19. Complaints; Hearings; Remedies

(1) Any person desiring to make a complaint against a licensee shall submit a complaint to the commission in verified form as prescribed by the commission. Upon receipt of a properly verified complaint, the commission shall send a copy of the complaint to the affected licensee by certified mail, and the licensee shall make answer to the complaint in writing within twenty (20) days, the commission shall make investigation of the underlying allegations of the complaint, and upon a finding of probable cause that a violation of this chapter has occurred, the commission shall order a hearing for the licensee to appear and show cause why he should not be disciplined for a violation of this chapter.

(2)(a) All hearings held pursuant to this chapter shall be held at the offices of the commission. The commission, for good cause shown, may order that a hearing be held in another location convenient to all parties.

(b) The commission shall give the complainant and the affected licensee twenty (20) days notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the commission may be accompanied by counsel.

(d) The commission or its executive director shall have the right to subpoena witnesses and documents as they deem necessary for the proper conduct of the hearing. The commission shall not entertain a motion for a continuance for failure of a witness to appear unless such witness shall have been duly subpoenaed.

(e)(i). Before commencing a hearing, the chairman of the commission shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown, such licensee shall be presumed to have waived his right to appear and be heard.

(ii). Upon the chairman's determination that all parties are ready to proceed, the chairman shall call the hearing to order and the complainant and the licensee may give opening statements. At the request of any party, the chairman shall order the sequestration of nonparty witnesses. The complainant shall present his complaint through sworn testimony and the production of physical evidence. The licensee, any counsel and any member of the commission may ask questions of the witnesses.

(iii). The licensee shall then present his case in rebuttal with equal right of cross examination of the parties. At the completion of the evidence, all parties may give closing statements.

(iv). At the conclusion of testimony and argument, the commission may go into closed session for deliberation.

(v). At the conclusion of deliberation, the commission may announce the commission's decision in any open session and shall notify the parties of its decision by mail within ten (10) days after the commission reaches its decision.

(f) Upon a finding that a licensee has violated one or more provisions of this chapter, the commission may privately or publicly reprimand the licensee, suspend the licensee's license for a period not to exceed two (2) years, or revoke the license. No person whose license has been revoked hereunder may apply for a new license for a period of at least five (5) years. The procedure for the reissuance of a license that is for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(3) Any person aggrieved by an action of the commission may file an appeal of such action in Circuit Court of Hinds County. Any appeal must be accompanied by and attested copy of the record of the hearing before the commission. Upon filing an appeal, the clerk of the court shall docket the appeal and cause process to issue in the same manner as an original action before such court. The action shall be set for hearing, and, upon hearing, the court shall enter an order affirming or setting aside the findings of the commission. Actions taken by the commission in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

(4) Nothing in this section shall be deemed as an exclusive remedy or prevent or proscribe any person's right to petition a court of law or equity for redress of a grievance against a licensee or any other entity.

73-4-21. License issuance without examination

(1) Any person who has practiced the auctioneering profession in this state and has been a resident of the State of Mississippi for at least two (2) years before July 1, 1995, may apply for an auctioneer's license hereunder without taking the examination as set forth in Section 73-4-17. The requirements for such an application are as follows:

(a) Submit an application as provided in this chapter.

(b) Submit an affidavit with the application that such applicant has been a practicing auctioneer and resident of the State of Mississippi for at least two (2) years before July 1, 1995, and that such applicant has actually called bids in at least three (3) sales in the past one (1) year.

(c) Tender with the application the license fee set by the commission.

(d) Tender proof of financial responsibility in the form of a surety bond in the sum of Ten Thousand Dollars (\$10, 000.00).

(2) If, upon verification of the information contained in the application, the individual is found to be otherwise qualified, the commission shall issue the applicant a license without examination.

73-4-23. License through reciprocity

Any auctioneer who is licensed in a state that (a) has requirements equal to the requirements of this chapter, (b) has requirements that have been approved by the commission, after a review of such state's licensing law, and (c) has entered into a reciprocal licensing agreement with the State of Mississippi through such state's regulatory authority over auctioneering, may apply for and be granted a license without examination. Applicants for a license through reciprocity shall furnish to the commission by application the same information as that of resident applicants. In addition to the biannual license fee, non residents shall pay to the commission a fee of Two Hundred Fifty Dollars (\$250.00). A nonresident auctioneer shall furnish to the commission a surety bond, obligated to the State of Mississippi, in the amount of Ten Thousand Dollars (\$10, 000.00) prior to being issued a license. The bond shall be executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state, as surety. The bond shall otherwise be in accordance with the provisions of this chapter.

73-4-25. Prohibited conduct

(1) Commission of any of the following acts by a licensee may subject the licensee to the disciplinary provisions contained herein:

- (a) Knowingly filing or causing to be filed a false application.
- (b) Failure to enter into a written contract with a seller or consignor prior to placing or permitting advertising for an auction sale to be placed.
- (c) Failure by the licensee to give the seller or consignor a signed receipt for items received for sale at auction, either by item received for sale at auction, either by item or lot number at the time the goods are received, unless the goods are to remain in the possession of the seller or consignor.
- (d) Failure to give the seller or consignor a statement or lot description, selling price, purchaser's identity and the next proceeds due to the seller or consignor.
- (e) Failure to place funds received from an auction sale in an escrow or trust account, and failure to make timely settlement on escrowed funds. Absent a written agreement to the contrary, five (5) business days shall be deemed timely for settlement on personal property.
- (f) Permitting an unlicensed auctioneer to call for bids in a auction sale.
- (g) Being convicted of one or more felonies.
- (h) Any course of intentional willful or wanton conduct by a licensee or such licensee's employees which misleads or creates a false impression among the seller, buyer, bidders and the auctioneer in the advertising, conducting and closing of an auction sale.

(2) In addition to the acts specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspend for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163. If there is any conflict between any provisions of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provision of Section 93-11-157 or 93-11-163, as the case may be, shall control.

73-4-27. Auction gallery license; additional requirements

The auction gallery license is intended for those fixed site locations which have recurring sales, received goods from numerous consignors during extended periods, and only desire to use a license auctioneer to call bids and strike the bargain between buyer and seller.

In addition to the other requirements contained elsewhere in this chapter, the holder of an auction gallery license shall comply with the following:

- (a) Enter into a written contract with a licensed auctioneer to call bids prior to the start of any auction sale. A copy of such contract shall be maintained on the premises and available for inspection by the commission.
- (b) Conspicuously post at the gallery location the license and the name of the licensee.
- (c) Maintain complete records of each sale held at the licensed premises which shall include, but shall not be limited to, consignment receipts, bidder registration, final settlements with consignors and any other documents relevant to the conduct of the sale. These records shall be maintained for a period of one (1) year from the date of the sale.
- (d) Maintain a file on all current and past employees of the auction gallery for the previous year. Such file should contain the employee's name, last known address and Social Security Number.
- (e) Assume responsibility for all checks, drafts, and other negotiable instruments tendered by buyers in payment for goods sold through the auction gallery.
- (f) Deposit all proceeds from the auction sales into the licensee's escrow account and make all disbursements from such escrow account.
- (g) The licensee shall make all of his records pertaining to the auction gallery available to a member or employee of the commission for inspection upon demand.

73-4-29. Bond; factory- built home auctions

- (1) Every person who applies for an auctioneer's license, as a condition to the granting and the retention thereof, shall file or have on file with the commission a bond in the amount of Ten Thousand Dollars (\$10, 000.00).
 - (2) Every person or persons who applies for an auction gallery license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars (\$10,000.00).
 - (3) Every person who applies for a livestock auctioneer's license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars (\$10, 000.00).
-

- (4) (a) Factory- built homes as defined by Section 75-49-3, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing, and electrical systems), like other finished products having concealed vital parts, may present hazards to the health, life and safety of persons and to the safety of property unless properly inspected prior to sale and properly anchored and blocked at the homesite after the sale so as to provide reasonable safety and protection to their owners and users. In order to insure that these homes are properly anchored and blocked at the homesite in accordance with the rules, regulations, and procedures promulgated by the State Commissioner of Insurance pursuant to his rule making power contained in Section 75-49-5, auctions of these homes shall be restricted to factory- built housing dealers licensed pursuant to Section 75-49-9 and subject to the penalties of Section 75-49-19, except as otherwise provided in paragraph (b).

(b) An auctioneer licensed under this chapter may auction a factory- built home without obtaining a license pursuant to Section 75-49-9, if the auction is not for the sole purpose of disposing of factory- built homes and if the disposal of the factory -built home is incidental to, and a part of, an entire estate or liquidation auction. The number of such homes that may be auctioned pursuant to this paragraph is limited to three (3) being offered for sale in one (1) auction or event.

73-4-31. Bond terms and form; cancellation

(1) The State of Mississippi shall be the obligee under any bond under this chapter.

(2) Such bond shall be:

(a) Executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state as a surety;

(b) In such form and containing such terms and conditions as the commission prescribes

(c) Conditional upon the faithful performance of all obligations of a licensee under this chapter and the rules and regulations promulgated hereunder, including the obligation to account for and pay over monies and proceeds to persons who are entitled to them; and

(d) Effective from the date of its filing with the commission, such bond shall not be affected by the expiration of the license period and shall continue in full force and effect until canceled, provided that the total and aggregate liability of the surety on a bond shall be limited to the amount specified in the bond and the continuous nature of the bond shall in no way be constructed as allowing the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force.

(3) (a) A licensee may not cancel a bond without the prior written approval of the commission and its approval of a substitute bond so as to provide continuous bonding of the licensee's activities.

(b) The surety on a bond may cancel a bond filed under this chapter only after the expiration of ninety (90) days from the date the surety mails a notice of intent to cancel, by registered or certified mail, return receipt requested, to the commission and to the principal of the bond.

(c) Not later than thirty (30) days prior to the date upon which a bond cancellation becomes effective, the licensee shall give written notice to the commission that a new bond has been obtained so as to provide continuous coverage of the licensee's activities.

73-4-33. Actions and hearings on bond

(1) If any licensee fails, or is alleged to have failed, to meet the obligations under this chapter and the rules and regulations promulgated hereunder, the commission shall hold a hearing and determine whether there has been such a failure, determine those persons who are proven claimants under the bond, and if appropriate distribute the bond proceeds to the proven claimants.

(2) Actions upon the bond and the right to payment under the bond shall extend solely to the commission, except that if the commission has not initiated auction under the bond by scheduling and holding a hearing, by litigation or otherwise, within thirty (30) days of a written request to do so, any claimant may initiate an action in the Circuit Court of Hinds County, Mississippi, to require the commission to take action.

(3) If, after a hearing, the commission determines the proven claims exceed the amount of the bond proceeds, the proceeds shall be prorated among proven claimants in the ratio that the amount of their proven claim bears to the total amount of all proven claims.

(4) The determination of the commission as to the fact and the amount of liability under the bond and the amount distributed to the claimants under the bond shall be binding upon the principal and surety of the bond.

(5) All hearings held under this section shall be held in accordance with the laws of this state.

(6) The existence of the bond and the bond recovery procedure shall in no way affect or alter any other right or remedy which a person may have under applicable law.

73-4-35. Auctioneer's duties to owner or consignor

(1) In performing the duties of an auctioneer, every auctioneer shall follow all reasonable requests of the owner or consignor of the goods being sold at the auction. Every auctioneer shall perform such auctioneer's duties so that the highest or most favorable offer made by a member of the audience is accepted, and shall otherwise perform such duties in accordance with the highest standards of the auctioneering profession.

(2) (a) Every licensee, within five (5) business days after the sale transaction, shall account to, or provide an accounting for, those persons who own or who are acting as consignor or goods which are the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

(b) Every licensee, within five (5) business days after a sale of goods and at closing of the sale, shall pay over, or provide for the paying over of, all monies and proceeds due to owner or consignor of goods which was the subject of an auction engaged in or conducted by such licensee or upon licensee's premises.

73-4-37. Records and accounts

Each licensee shall keep and maintain in a safe place for a period of not less than two (2) years complete and current records and accounts pertaining to such licensee's licensed activity, including the name and address of the owner or consignor of all goods involved in such activities, a description of such goods, the terms and conditions of the acceptance of such goods and accounts of all monies received and paid out, whether on the licensee's own behalf or as agent, as a result of such activities.

73-4-39. Written contract with owner or consignor; exception

Except with respect to goods sold through an auction gallery, no licensee shall sell goods at an auction until the auctioneer or auction gallery involved has first entered into a written contract with the owner or consignor of such goods, which contract sets forth the terms and conditions upon which such auctioneer or auction gallery accepts the goods for sale. A copy of every written contract shall be retained for a period of two (2) years from the date of the auction.

73-4-41. Advertising disclosures required

All advertisements of auctions shall disclose:

- (a) The auctioneer's name and the name of the auction gallery involved; and
- (b) Whether the auction is to be absolute or with reserve; and
- (c) The auctioneer's or auction gallery's auction license number.

73-4-43. Acting without license; penalty

- (1) An individual may not act as an auctioneer without first having obtained and having in effect the license required under this chapter.
- (2) Any person, except a licensed auctioneer who shall have become exempt by reason of compliance with the applicable provisions of this chapter, may not operate an auction gallery without having obtained and having in effect a license for such auction gallery as required under this chapter.
- (3) A person who violates the provisions of this section shall be fined, upon conviction, not more than One Thousand Dollars (\$1, 000.00).

73-4-45. Penalty for other violations

Any person who violates any provision of this chapter for which a specific penalty is not provided, upon convictions, shall be fined not more than One Thousand Dollars (\$1, 000.00).

73-4-47. Commission action for injunction

The commission may maintain an action in the name of the State of Mississippi to enjoin any person from engaging, without a license issued under this chapter or pursuant to an exemption defined in this chapter, in any activity for which a license is required under this chapter.

73-4-49. Averments required in charging violation

In charging any person in an affidavit, information, or indictment with a violation of conducting, without a license or pursuant to an exemption of this chapter, any activity for which a license or an exemption there for is required, it shall be sufficient to charge that the person did, upon a certain day in certain county, engage in such activity and that such person did not have a license or exemption to do so. No further facts need to be averred concerning the matter.

73-4-51. New programs subject to appropriations

All new programs authorized in this chapter are subject to the availability of funds specifically appropriated therefor by the Legislature.

Credits

West's Annotated Mississippi Code Title 73. Professions and Vocations Chapter 4. Auctioneers

Laws 1995, Chapter 405. Section 26. effective July 1, 1995